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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,573	01/17/2002	Robert W. Luffel	10001582-5	1003

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EXAMINER
TRAN, KHOA H

ART UNIT	PAPER NUMBER
3634	

DATE MAILED: 11/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

SK

Office Action Summary	Application No.	Applicant(s)	
	10/051,573	ROBERT W. LUFFEL	
	Examiner	Art Unit	
	Khoa Tran	3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 August 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claims 1, 14, 15, and 16, the claims appear to be misleading or/and misdescriptive because the claims set forth the device and the chassis as the two separate structures. However, it appears that the device itself is the chassis because as shown by Figure 3 both reference numerals (16) and (48) of the device and the chassis are the same element. Further, it is unclear what specific structure does the term "device" requires? With respect to claim 15, the function for the "cabinet means" and "housing means" have not been properly set forth. In particular, the reciting of various means follow by the word "defining" in attempting to recite the claim element as a means for performing a specified function, however, the reciting words "defining" is not the same as reciting what function the means is performing. Accordingly, the failure to properly recite a function for the "cabinet means" "and "housing means" in accordance with the sixth paragraph of Section 112 will result in the element being read merely as a "cabinet" and "housing".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 9, 11, and 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Cherry. The claims are of such breadth that they read on the rack-mount storage system of Cherry. Cherry discloses a rack-mount storage system comprising an equipment cabinet (10) having first and second sides (12) and at least one device having a chassis of an opening size (the respective front opening of the cabinet shows to receive a respective device 40) that receive the first and second devices (40). Each device (40) has at least one mounting pathways (28) locate near the bottom surface of the device. At least one support means of spars (16) being sized to engage and support with the respective individual mounting pathway (28). The supporting spar (16) extends substantially transversely between the first and second sides (12) of the equipment cabinet and wherein the spars support the first and second devices in the chassis of the equipment cabinet. See Figures 1, 3 and 4.

Claims 1-4, 7-9, 11-19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Whiten et al. The claims are of such breadth that they read on the rack-mount storage system of Whiten et al. Whiten et al. disclose a rack-mount storage system comprising an equipment cabinet having a first side(14) and a second side (10) and first and second devices (58). Each device (58) having a chassis (64) and two opposite sidewalls (60) connected to a top surface (62) and a bottom surface that has a channel defining therebetween sidewalls (60). A plurality of mounting pathway channels (holes on the sidewalls of the device (58)) locate adjacent to the top surface of

the device so as to receive the supporting means of spars (54, 56) extending transversely between the first side (14) and the second side (10) of the cabinet. The mounting pathways (holes on the side faces of the device (58)) locate fore-and-aft at the center gravity of the device, see Figure 1. The first device is secured to the second device through the supporting means/spars, and wherein the supporting means/spars are being supported by the first and second mounting rails (40) that are spaced apart at both sides of the cabinet See Figures 1-3.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 5, 6, 10 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whiten et al. as applied to claims 1-4, 7-9, 11-19 and 21 above, and further in view of Robertson et al. Robertson et al. teach the spar (52, 46) center in form of a curved round sleeve is curved higher than both ends (46) of the spar. See Figure 1. It would have been obvious to one of ordinary skill in the art at the time of invention was made to provide the supporting means of spars of Whiten et al. with the provision the spars as taught by Robertson et al. in order to promote the adjustability of the spar to accommodate different length between first and second sides of the cabinet. With respect to claim 5, aluminum is a well-known and commercially available material

known for its lightweight properties. Accordingly, it would have been obvious to one ordinary skill in the art as a matter of engineering design choice to utilize aluminum as the particular material for constructing a support spar because of its durability and lightweight and because it is well-within the level of skill in the art to utilize the known features of the art for the purpose for which they are known.

Response to Arguments

Applicants' arguments filed on August 22, 2002 have been fully considered but they are not deemed to be persuasive.

With respect to applicants' arguments on pages 6-7 under *35 USC § 112* rejections that the device (16) and the chassis (48) are two separate components, the examiner is respectfully disagrees. It should be noted on page 5, lines 28-29, on page 13, lines 23-24, and on page 18, lines 1-2, the specification recites the device "may be" provided with a chassis. Thus, there is nowhere in the drawings have illustrated the chassis and the device to be two separate components. Further, it should be noted that Figure 3 both reference numerals (16) and (48) are indicated and referred the device and the chassis as the same element.

With respect to applicants' arguments on page 8 under *35 USC § 112* rejections that the means-plus-function in claim 15 is proper because the word "for defining" recites the function of the means, the examiner is respectfully disagrees. It should be noted that the claim defining in functional terms is not sufficient to convert the claim element containing that term into a means for performing a specified function within the

meaning of section 112 (6), see *Greenberg v. Ethicon Endo-surgery, Inc.,* 91 F.3d 1580, 1583, 39 USPQ2d 1783, 1786 (Fed. Cir. 1996). Further, the word "for defining" attempting to define or describe the means for performing a specific function, however, no mechanical function has been recited to perform a specified function follows by the word "for defining", it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

With respect to applicants' arguments on page 12 that Cherry does not teach a support spar extends substantially transversely between the first and second sides of the equipment cabinet, the examiner is respectfully disagrees. It should be noted that both the front and rear posts (12) are considered as the first and second sides to support the spar (16) transversely therebetween.

With respect to applicants' arguments on page 14 that Whiten et al. do not teach the device having the chassis thus the claims do not anticipated under Whiten et al. It should be noted as aforementioned under *35 USC § 112* rejections, it appears the device and the chassis are the same element because there is no drawing showing the device and the chassis as the two separate components. Accordingly, the device (58) having the chassis that reads on members (64).

With respect to applicants arguments on page 14-15 under *35 USC § 103* rejections that Robertson et al. do not teach the support spar being curved such that the center of the support spar is higher than its ends, the examiner is respectfully disagrees. It should be noted that the center round curved support bar (52 or 46) as shown in

Figure 1 illustrates the center bar being higher above from its ends (48). Further, it should be noted that Whiten et al. is a primary reference and Robertson et al. have been applied for their teaching that one of ordinary skill in the art would reasonably be expected to draw the teaching therefrom, there is no requirement for the secondary reference to meet every limitation of the claim before it can be utilized and the combination of references is proper for any reason taught by the prior art and not just applicants' reason.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 8:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group is (703) 305-3597 or (703) 305-3598.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

If the applicant is submitted by facsimile transmission, applicant is hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and M.P.E.P. 502.02). In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check **should not be** submitting by facsimile transmission separately from the check. Responses submitted by facsimile transmission should include a Certificate of Transmission (M.P.E.P 512). The following is an example of the format the certification might take:

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Furthermore, please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Khoa Tran
November 01, 2002

Daniel P Stodola

DANIEL P. STODOLA
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